

### **Remarks/Arguments**

This paper is submitted in response to the Office Action mailed July 6, 2006. In the Office Action, the Examiner objected to claims 23 and 45 for informalities and rejected claims 23 and 45 under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner also rejected claims 1-18, 27-41, and 49 under 35 U.S.C. §102(b) as being anticipated by "Special Edition using Microsoft Project 2000" by Tim Pyron (hereinafter "Pyron"). The Examiner also rejected claims 19-51 and 53-55 under 35 U.S.C. §103(a) as being unpatentable over Pyron in view of U.S. Patent No. 6,571,158 to Sinex (hereinafter "Sinex").

In view of the following remarks and the remarks made in the previous Amendment and Response to the Office Action mailed June 1, 2006, immediate allowance of claims 1-55 is respectfully requested.

### **Objection of Claims 23 and 45 for informalities**

The Examiner objected to the use of the claim element "a number of tracks" as lacking antecedent basis. Applicant respectfully disagrees and asserts that "a number of tracks" is the first use of this claim element within the claim and thus, is properly used. Additionally, the claim element "a number of tracks" has proper antecedent basis within the specification as filed at paragraphs [20], [30-31], [37-42] and elsewhere within the specification. Consequently, withdrawal of this objection is respectfully requested.

### **Rejection of Claims 23 and 45 under 35 U.S.C. §112, second paragraph**

The Examiner rejected claims 23 and 45 under 35 U.S.C. §112, second paragraph, as being indefinite. Applicant respectfully disagrees and asserts that the term "target number" is definite and properly used. As is clear from claims 23 and 45, the term "target number" has proper antecedent basis in the previously used claim language providing "a target number of subtasks." Consequently, withdrawal of this objection is respectfully requested.

### **Rejection of Claims 1-18 and 52 under 35 U.S.C. §102(b)**

In the Office Action, the Examiner rejected claims 1-18 and 52 under 35 U.S.C. §102(b) as being anticipated by Pyron. However, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a

single prior art reference.” MPEP §2131 (*quoting Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Furthermore, MPEP §2131 provides that “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Quoting Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In this case, Pyron does not disclose each and every element of claims 1-18 and 52. For example, independent claims 1 and 26 recite, “recording a variance between the actual number of subtasks completed and the target number associated with each time slot; recording an accumulated variance associated with each time slot.” Claims 2-18 and 52 depend from independent claims 1 and 48 respectively and thus, also include this claim language.

On page 5 of the Office Action, the Examiner asserted that Pyron discloses “recording a variance between the actual number of subtasks completed and the target number associated with each time slot; recording an accumulated variance associated with each time slot (Ch 16, page 13, See Figure 16.19 where variances are listed for each subtask and for each summary task.)” Applicant respectfully disagrees.

A variance between the actual number of subtasks completed and the target number associated with each time slot is never determined in Pyron. Instead, Pyron indicates a percent complete for each task and sub-task and not a variance between the actual number of subtasks completed and the target number of subtasks.

In the Office Action, the Examiner appears to be interpreting Pyron as disclosing a variance when the time allotted for a task is exceeded. However, this interpretation of Pyron does not disclose the claim language that provides “a variance between the actual number of subtasks completed and the target number.” Instead, Pyron is concerned with the time allocated for each task, which is not equivalent to a variance between the actual number of subtasks completed and the target number associated with each time slot determined.

More specifically, a variance as provided for in claims 1-18 and 52 is the “variance between the actual number of subtasks completed and the target number associated with each time slot.” (emphasis added) Figure 17.3 of Pyron does not disclose the “variance” of claims 1-18 and 52. Instead, Figure 17.3 of Pyron discloses a variety of costs including a fixed cost, a total cost, baseline, variance, and actual cost for each task and subtask. However, none of these things are the “variance” of claims 1-18 and 52.

Additionally, Figure 16.19 of Pyron discloses a percent completed for each task, the actual duration of the task, and the remaining duration of each task and subtask. Again, none of these things are the “variance” defined in claims 1-18 and 52.

Consequently, Pyron does not disclose each and every element of claims 1-18 and 52. Therefore, Pyron does not anticipate claims 1-18 and 52. Thus, Applicant respectfully requests that these rejections of claims 1-18 and 52 be withdrawn.

Because these rejections are similar to the rejections made in the Office Action mailed March 2, 2006, Applicant respectfully requests the Examiner also consider the remarks made in the previous Amendment and Response to the Office Action mailed June 1, 2006.

Other examples of claim elements of claims 1-18 and 52 that are not disclosed by Pyron include but are not limited to:

- I. Claim 1: recording an accumulated variance associated with each time slot
- II. Claim 1: recording a total variance for the predetermined period of time
- III. Claim 8: the target number of subtasks to be completed during each time slot is modified as a function of the recorded total variances
- IV. Claim 52(Claim 26): recording a reason for the variance between the actual number of subtasks completed and the target number when the variance is a nonzero number

#### Rejection of Claims 19-51 and 53-55 under 35 U.S.C. §103(a)

The Examiner rejected claims 19-51 and 53-55 under 35 U.S.C. §103(a) as being unpatentable over Pyron in view of Sinex. Additionally, MPEP §2143 states that:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir.

1991).

As discussed above, Pyron does not teach or suggest “recording a variance between the actual number of subtasks completed and the target number associated with each time slot.” Claims 19-51 and 53-55 include this claim language and therefore, Pyron does not teach or suggest all the elements of claims 19-51 and 53-55.

Furthermore, Sinex, like Pyron, does not teach or suggest “recording a variance between the actual number of subtasks completed and the target number associated with each time slot.” On page 9 of the Office Action, the Examiner asserted that:

Sinex teaches that it is known to record on the variance card a reason for any variance between the actual number of subtasks completed and the target number; and recording the reason with the total variance (See Figure 12 and (column 12, lines 48-50) “box 316 is used to enable the assigned mechanic to record notes regarding repair, corrective action, turnover or rejection.” Which is the reason for the time required for the task).

Applicants respectfully disagree. Sinex is concerned with a specific task and, like Pyron, is concerned with tracking the time associated with completing a single task or subtask. However and in contrast with the Examiner’s assertion, Sinex does not teach or suggest recording a variance between the actual number of subtasks completed and the target number associated with each time slot as recited by claims 19-51 and 53-55.

Therefore, neither Sinex nor Pyron teach or suggest all the elements of claims 19-51 and 53-55. Consequently, the *prima facie* obviousness of claims 19-51 and 53-55 has not been established. Therefore, withdrawal of this rejection is respectfully requested.

Because these rejections are similar to the rejections made in the Office Action mailed March 2, 2006, Applicant respectfully requests the Examiner also consider the remarks made in the previous Amendment and Response to the Office Action mailed June 1, 2006.

Other examples of claim elements of claims 19-51 and 53-55 that are not disclosed by Pyron or Sinex include but are not limited to:

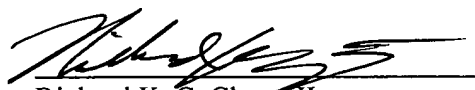
- I. Claim 20: the total variance and the reason are recorded without reference to the worker.

- II. Claim 21: providing a variance card to the at least one employee, wherein the variance card includes a plurality of predetermined reasons which may be checked off to record the reason for the variance.
- III. Claim 23: planning a number of workers for at least a portion of the period of time based on a number of tracks in a work flow based on the target number
- IV. Claim 24: reallocating a worker based on the planned number of workers
- V. Claim 39: recording a total variance for the period of time and the reason for the total variance
- VI. Claim 42: modifying the target number of subtasks to be completed during at least one time slot as a function of the total variance and the reason for the total variance
- VII. Claim 47: providing diagnostics on the completion of the task
- VIII. Claim 50: taking at least one action in response to the variance
- IX. Claim 53: analyzing the variance
- X. Claim 54: taking an action associated with the variance in response to the analysis
- XI. Claim 55: wherein the action includes changing at least one process associated with the task

### Conclusion

In accordance with the arguments presented above, Applicants respectfully request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing the allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

  
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